

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sarah Bookbinder	Team: Team # 2	CCRB Case #: 200200019	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/01/2002 12:20 PM	Location of Incident: Kingston Avenue & Dean Street	Precinct: 77	18 Mo. SOL 7/1/2003	EO SOL 7/1/2003	
Date/Time CV Reported Wed, 01/02/2002 6:30 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Wed, 01/02/2002 12:10 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Raymond Festino	03697	915709	077 Precinct
2. POM Efrain Collado	22541	921221	077 Precinct
3. POM Albert Arredondo	10316	920000	077 Precinct

Officer(s)	Allegation	Investigator Recommendation
A.SGT Raymond Festino	Abuse: Sgt. Raymond Festino stopped the car in which § 87(2)(b) was an occupant.	
B.POM Albert Arredondo	Abuse: PO Albert Arredondo drew his gun.	
C.POM Efrain Collado	Abuse: Efrain Collado drew his gun.	
D.SGT Raymond Festino	Force: Sgt. Raymond Festino drew his gun.	
E.POM Efrain Collado	Force: PO Efrain Collado used physical force against § 87(2)(b)	
F.SGT Raymond Festino	Discourtesy: Sgt. Raymond Festino spoke rudely to § 87(2)(b)	
G.SGT Raymond Festino	Abuse: Sgt. Raymond Festino authorized the frisk and search of § 87(2)(b)	
H.SGT Raymond Festino	Abuse: Sgt. Raymond Festino threatened to use pepper spray against § 87(2)(b)	

Synopsis

Just after midnight on January 1, 2002, § 87(2)(b) his brother § 87(2)(b) and § 87(2)(b)'s girlfriend, § 87(2)(b) were driving from § 87(2)(b) father's home in Brooklyn down Kingston Avenue. When they turned onto Dean Street, they were pulled over by an unmarked car and were approached by three plainclothes officers. PO Arredondo approached § 87(2)(b) the driver, and asked him for his license and registration. As § 87(2)(b) was speaking to the officer, PO Collado opened the back door and asked § 87(2)(b) who was seated in the back driver's side seat, for his ID. Certain that they had done nothing illegal, § 87(2)(b) asked the officer why he wanted to see his ID. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Collado asked § 87(2)(b) again for his ID, and when he repeatedly asked why, the officer asked him to step out of the car. When § 87(2)(b) asked why he had to get out of the car, the officer reached into the car and pulled § 87(2)(b) out by the arms. Sgt. Festino, who was on the other side of the car, then joined PO Collado and they attempted to frisk § 87(2)(b). They put him against the car face-first, handcuffed him behind his back, and then were able to search him. As they were doing so, the sergeant got out his pepper spray, held it into § 87(2)(b) face, and said that he was going to mace him. However, PO Collado asked him not to because he believed that he too would be hit with the pepper spray, and so the sergeant did not spray § 87(2)(b).

After approximately ten minutes, the officers found that the object in § 87(2)(b) pants was his cellular phone. They then released him and explained to him and the other civilians that they had been pulled over for security reasons.

§ 87(2)(g)

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Summary of Complaint

§ 87(2)(b) filed his complaint at the 71st precinct on January 2, 2002. This complaint was relayed to the CCRB by an officer from that precinct at 12:00PM that day, however the complaint form itself was never forwarded to the CCRB, and is therefore not included in this file. In § 87(2)(b) complaint form, as read by the officer, § 87(2)(b) wrote that on New Year's Eve, his brother, his girlfriend and himself were driving down Kingston Avenue and then turned down Dean Street. When they turned, they were pulled over by an unmarked car. PO Arredondo approached the driver. PO Collado opened up the back door and asked § 87(2)(b) for ID. § 87(2)(b) asked the officer why he wanted to see his ID, and the officer asked him to step out of the car. § 87(2)(b) asked him why, and the officer grabbed him and pulled him out of the car. Sgt. Festino then approached PO Collado and told him to handcuff § 87(2)(b). Sgt. Festino and PO Collado then handcuffed § 87(2)(b) leaned him up against the back of the car, and started to search him. He found his cellular phone and stopped searching. However, Sgt. Festino then said, "I'm going to mace him," and held the mace up to § 87(2)(b) face. They then sat § 87(2)(b) on the front of the officers' car. His brother's girlfriend asked the officers for their names and badge numbers. Sgt. Festino then began to scream at § 87(2)(b) informing him that he was a sergeant and that he would do whatever he wanted. PO Collado then took off the handcuffs.

§ 87(2)(b) was interviewed at the CCRB on January 10, 2002. A summary of this interview can be found in Enclosure 8A-D. During this interview, he stated that on January 1, 2002, at approximately 12:30 AM, he was driving with his brother, § 87(2)(b) and § 87(2)(b)'s girlfriend, § 87(2)(b) down Kingston Avenue in Brooklyn. § 87(2)(b) was driving. They had been at his father's house in Brooklyn for New Year's

Eve, and none of them had been drinking or taking drugs. § 87(2)(b) the owner of the car, sat in the front passenger's seat, and § 87(2) sat in the back behind the driver's seat.

§ 87(2) stopped at the lights at Kingston Avenue and Dean Street, and an unmarked car pulled up behind him. When the light turned green, § 87(2) signaled and turned right. As soon as he had made the right, the car behind them put on its lights and sirens, indicating for § 87(2)(b) to pull over. He pulled over immediately and the police car pulled over directly behind him.

Three plainclothes officers got out of the car. One, who later identified himself as PO Arredondo, approached § 87(2) in the driver's seat. § 87(2) stated that PO Arredondo may have had his gun drawn. Sgt. Festino approached the front passenger's seat, and PO Collado approached the back door on the driver's side. PO Arredondo asked § 87(2) to roll down the window. As he did so, PO Collado opened the back door and asked § 87(2) for ID.

§ 87(2) asked PO Collado why he wanted to check his ID, and the officer told him again to show him his ID, and § 87(2) again asked why. The officer then told § 87(2) to get out of the car. § 87(2) asked him why. The officer asked him again to get out of the car. § 87(2) then said to the officer that he would show him his ID, but that he did not have to get out of the car to do so. The officer grabbed § 87(2)'s left arm and pulled him out of the car. § 87(2) stood against the door with his back towards the car as Sgt. Festino joined PO Collado, who was standing in front of § 87(2). Sgt. Festino asked § 87(2) why he was causing so much commotion, and why he did not just show the officer his ID. Sgt. Festino then told PO Collado to put § 87(2) in handcuffs. Both officers then started grabbing him, one on each arm, and they twisted him around so that he was facing the car, leaning down with his hands behind his back. § 87(2)(b) stated that he did not resist the officers at all, neither verbally nor physically. Both officers then pushed him against the car. PO Collado leaned him down and put handcuffs on him.

As Sgt. Festino held § 87(2) down, he told PO Collado that he had felt something in § 87(2)'s jacket, and that he should search him. PO Collado then began patting § 87(2) down. He patted down § 87(2)'s pants extensively and said that § 87(2) was resisting and that he was hiding something. § 87(2)(b) stated that he did not resist the search in any way, and that he did not say anything throughout the search. Sgt. Festino leaned down next to § 87(2) on the right side and said "Let me mace him." He held his mace less than a foot from § 87(2)'s head, which was against the car. § 87(2) turned his face away to avoid being maced and pressed his face against the car, leaning against his left cheek. The sergeant did not mace him.

After a few minutes, PO Collado pulled § 87(2)(b)'s cell phone out of his sweatshirt pocket. PO Collado then sat § 87(2)(b) on the back of the police car. As he did so, § 87(2)(b) and § 87(2)(b) who had been talking to PO Arredondo throughout this incident from inside the car, got out of the car and walked to the back. § 87(2)(b) told the officers that she wanted their badge numbers. Sgt. Festino gave her his number, but told her she did not need the other officers' numbers because he was the sergeant. § 87(2) then told § 87(2)(b) to get the other officers' numbers anyway, at which time Sgt. Festino came over to him and started to yell at him that he was the sergeant and he was in charge. Meanwhile, § 87(2)(b) was able to obtain all of the officers' names and badge numbers.

PO Collado then approached § 87(2)(b) and explained to him that they had stopped them for security reasons, because another officer had been killed that night. Sgt. Festino went to talk to § 87(2)(b) and PO Collado stood by § 87(2) and told him that could arrest him for resisting arrest and causing problems in the middle of the street. As he was saying this to § 87(2)(b) Sgt. Festino asked him if he worked at § 87(2)(b).

§ 87(2)(b) § 87(2)(b) § 87(2)(b) told him that he did.

After a few minutes, PO Collado took the handcuffs off § 87(2). He asked § 87(2) for his name, telling him that he needed to record the fact that he had handcuffed him. He did not ask § 87(2) for his ID. He also gave § 87(2) his name and badge number. The officers then got back in the car and pulled away. § 87(2)(b) and § 87(2)(b) got into their car and continued down Dean Street. None of them were given any tickets or summonses.

Results of Investigation

Civilian Witness Interviews

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on February 2, 2002. A summary of the interview can be found in Enclosure 9A-D. § 87(2)(g)

§ 87(2)(b) stated that he noticed that the unmarked police car had been following behind them for approximately one block on Kingston Avenue before it pulled up next to two double-parked taxis. § 87(2)(b) continued to drive down Kingston Avenue until he reached Dean Street, where he stopped at the red light. At that time, he noticed that the unmarked car had pulled up behind him again. After the light turned green, § 87(2)(b) made a right turn onto Dean Street, and then the car pulled him over.

§ 87(2)(b) also noted that he could see the officers through the rear-view mirror as they exited their car, and stated that they all had their guns pointed and were also carrying their flashlights. When the officers reached the car and PO Collado opened the back door, § 87(2) looked behind him and saw PO Collado grab § 87(2)'s shoulders in order to pull him out of the car. He then took him to the trunk of the car where he stated § 87(2) lay face-down on the hood of the car, and he was not moving. However, the officers were pulling him back and forth and yelling at § 87(2) to stay still and to stop moving. Sgt. Festino then grabbed § 87(2)'s head and pushed it down against the trunk. They "slammed" § 87(2) around for at least five minutes, and § 87(2) later told § 87(2) that the officers were digging their hands into his pants and underwear.

§ 87(2) then asked PO Arredondo, who was still in front of the driver's side door, why they were doing all of this. The officer answered that it was necessary because § 87(2) was being uncooperative. § 87(2) told the officer that he was going to call his mother to tell her what was happening. As he took out his cellular telephone to call her, PO Arredondo told him that he could not use his telephone. § 87(2)(b) stated that he then looked back at his brother again, and that he could hear him being slammed against the trunk. They were pushing him against the car so hard that the car was shaking. They continued to feel all over him. Eventually, one of the officers said, "Oh, I found something, I found something," and § 87(2) was then handcuffed. The officer then pulled § 87(2)'s cellular telephone out of his pocket and stopped checking him. § 87(2) then asked the officer if he could please take the handcuffs off. The sergeant said, "We have to mace him. This guy is just being obnoxious." The sergeant got out his mace and § 87(2) turned his head, which was still against the car, to the right to avoid the mace. The sergeant, who was on § 87(2)'s left, was trying to spray him, but was not standing at the right angle to reach his face. At that time § 87(2) turned to PO Arredondo and asked him to please tell the officer to stop because § 87(2) was not doing anything. The sergeant continued to yell at § 87(2) telling him he was an asshole and that he wanted to mace him.

The officers then sat § 87(2) on the front hood of their car, and Sgt. Festino walked over to the passenger side and told § 87(2)(b) to get out of the car. He asked her what was wrong with § 87(2) and why had he been acting so strangely. § 87(2)(b) told the officer that it was because they were being treated unfairly and that the officers' behavior had been uncalled for. PO Arredondo then asked § 87(2) for his ID and asked him who owned the car, and § 87(2)(b) told them it was hers and showed him the registration.

The sergeant then asked § 87(2) why his brother had been acting like such an "asshole." § 87(2) did not answer because he believed the officer was wrong for asking him this question.

The sergeant then wrote down the information for all three of them. § 87(2) asked him if they were under arrest, and the sergeant replied that he should take § 87(2) into the precinct, but that he would be letting him go instead.

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on February 22, 2002. A summary of this interview can be found in Enclosure 10A-D. § 87(2)(g)

She stated that § 87(2) was driving fairly slowly when they saw lights

flashing in the car behind them, so § 87(2) pulled the car over, thinking that the officers would pass them. § 87(2)(b) stated that she had not realized that the people behind them were police officers until they were pulled over. Neither § 87(2) nor § 87(2) had mentioned anything about the car behind them before they got pulled over.

§ 87(2)(b) looked behind her and saw three officers getting out of the car with their guns pointed at the car. Further, when PO Collado pulled § 87(2) out of the car and around to the trunk, § 87(2)(b) stated that they slammed him so hard that she felt the car shake. As they handled § 87(2) § 87(2)(b) heard them call him an “asshole.”

The officers handcuffed him and pushed his face against the back window. They continued to push him so that the car was rocking and his face was squashed against the window, which § 87(2)(b) could see from inside the car. She stated that § 87(2) was not struggling but that the officers were shaking him and searching him for approximately ten minutes. § 87(2) later told § 87(2)(b) that the officers had their hands down his pants and were feeling around his genitals, and that he was made to feel extremely uncomfortable. However, § 87(2)(b) stated that § 87(2) was not saying anything during this struggle, and that he did not look angry, but instead looked sad, as if he had given up. The sergeant then pulled out his mace and told § 87(2) he was going to mace him. He held the mace two inches from § 87(2)'s face as he said this.

While this was happening, § 87(2) picked up his own phone to call his mother to tell her what was happening. PO Arredondo told him to put the phone down and that he was not allowed to call anyone.

When the officers had released § 87(2) from the handcuffs, Sgt. Festino also pulled § 87(2) and § 87(2)(b) over separately to ask them what was the matter with § 87(2) why he was refusing to get out of the car, and why he was being such an “asshole.” § 87(2)(b) asked the officers for their names and badge numbers. Sgt. Festino told her that she did not need any of the officers’ numbers because he was the sergeant, and then gave her his own information. She asked the other officers for their information separately.

PO Arredondo then approached § 87(2)(b) and explained to her that they were trying to secure the streets on New Year’s Eve. He said that the way § 87(2) had turned the corner had made him a little suspicious. § 87(2)(b) stated that § 87(2) is a very careful driver. The officer did not mention anything to her about § 87(2) not signaling, or committing any other type of traffic violation.

§ 87(2)(b) stated that as this incident was occurring, a crowd began to gather and people were yelling at the officers to leave them alone.

Police Officer Interviews

Sgt. Raymond Festino

Sgt. Festino was interviewed on January 29, 2002. A summary of this interview can be found in Enclosure 12A-B. Sgt. Festino prefaced his account of the incident by stating that it occurred in Crown Heights, where there are typically many gunshots fired around midnight on New Year’s Eve. At approximately 12:10 AM on January 1, 2002, he was in an unmarked car with PO Collado and PO Arredondo, and they were driving northbound on Kingston Avenue when they passed St. Marks Place, where they heard multiple gunshots. Just after hearing the shots, they saw a four-door car make an “abrupt” right-hand turn. When asked to describe the turn in more detail, Sgt. Festino stated that the driver had sped up and overcompensated the turn.

As they watched this car make the turn, Sgt. Festino noticed that the passenger in the back seat appeared to be nervous and agitated, and was looking around. Sgt. Festino stated that he had could see this passenger “perfectly” from where he was seated in the car. PO Arredondo was driving, and Sgt. Festino was seated in the front passenger’s seat. At that point, Sgt. Festino thought that perhaps the passenger in the back seat of the car in front of them might have been involved in the shots that had been fired.

After following this car for approximately one block, the officers pulled the car over on Kingston Avenue and Dean Street because of Sgt. Festino’s suspicions about the back seat passenger. When asked, Sgt.

Festino clarified that they did not pull the car over for any traffic violation, but only because of their concern that the passengers may have been related to the shots fired.

When they pulled over, all three officers exited the car, and the two police officers approached the driver's side, while Sgt. Festino approached the passenger's side. They did not have their guns drawn. The back passenger was seated behind the driver. As Sgt. Festino approached the car, he noticed the back passenger putting something into his waistband. Sgt. Festino could not tell what the object was, but he suspected it to be a gun. Sgt. Festino signaled PO Collado to open the door. PO Collado opened the door and started talking to § 87(2)(b). § 87(2)(b) was cursing at the officer and appeared to be very irate. PO Collado asked him to step out of the car so they could ensure that he did not have a gun on him, but § 87(2)(b) refused to exit the car. Sgt. Festino then walked around to the other side of the car. PO Collado "assisted" § 87(2)(b) out of the car, although he was resisting the officer. PO Collado moved § 87(2)(b) to the back of the car. The two officers then attempted to frisk § 87(2)(b) but he would not allow them to do so. He resisted by flailing his arms around. The officers then each grabbed one of § 87(2)(b)'s arms and handcuffed him for their own safety, particularly because they did not know what he had in his waistband.

§ 87(2)(b) continued to resist the officers, and so Sgt. Festino took out his can of mace and told him that if he did not relax, he was going to mace him. § 87(2)(b) then calmed down and the officers frisked him and discovered that the object in his pocket was his cellular phone. Sgt. Festino then took the handcuffs off, sat § 87(2)(b) on the back of the police car, and asked him why he was so irate. He explained to § 87(2)(b) that they had pulled him over because they had heard shots and they thought that perhaps § 87(2)(b) had a gun on him. § 87(2)(b) continued to curse at the officers.

Sgt. Festino then went to the driver, who informed the sergeant that he was § 87(2)(b)'s brother. The sergeant asked him if § 87(2)(b) had been drinking, and he said no. He also informed the sergeant that § 87(2)(b) worked at § 87(2)(b). The sergeant then returned to § 87(2)(b) who asked him for his name and shield number. The sergeant supplied him with this information.

Sgt. Festino stated that if it had not been New Year's Eve, he probably would have arrested § 87(2)(b) for disorderly conduct because he was so irate throughout the incident. However, because there were still gunshots going off in the neighborhood, Sgt. Festino stated that he did not feel it was appropriate to arrest § 87(2)(b) at that point.

PO Albert Arredondo

PO Arredondo was interviewed at the CCRB on February 13, 2002. A summary of this interview can be found in Enclosure 14A-B. PO Arredondo § 87(2)(g)

§ 87(2)(b) stated that he made an abrupt, wide turn, and that the passenger in the back seat looked nervous and was looking behind him. He also confirmed that they were hearing many gunshots as they drove around the neighborhood, and that they seemed to be coming from St. Marks.

Sgt. Festino told PO Arredondo that they should see what was going on with the car, although PO Arredondo stated that he was going to pull up next to the car anyway, in order to investigate what was going on inside. PO Arredondo followed the car onto Dean Street, where he pulled the car over.

The officers got out of the car. As they approached the car in front of them, they did not have their guns drawn, but they did have their flashlights shining at the car. He stated that once they approached the car, they were underneath the street light and could see without the flashlights.

PO Arredondo asked the driver for his license, registration and insurance card immediately. As he did so, PO Collado began talking to the passenger in the back of the car. He then got out of the car. PO Arredondo stated that he did not see whether PO Collado pulled the passenger out of the car, or if he came out voluntarily, because he was watching the passengers in the front seat. PO Collado and Sgt. Festino began to speak to the passenger, who was then standing next to the car.

They then went to the trunk of the car, where he heard Sgt. Festino say he was going to mace him. PO Arredondo turned around to look and saw that they had § 87(2)(b) up against the back of the car with his hands

against the car. PO Arredondo was focusing on the driver and the front passenger, but he heard § 87(2) say, "Ha ha, it's only a phone." PO Arredondo then looked back and saw the officers removing § 87(2)'s handcuffs. He stated that § 87(2) was only handcuffed for two minutes. When asked if he ever saw the officers frisk § 87(2), he stated that he would not have been able to see a frisk because the officer and § 87(2) were behind the car. When asked if § 87(2) was struggling during the interaction, he stated that he was mainly paying attention to the passengers in the front seat, and that he did not notice if § 87(2) was struggling or not. When asked whether § 87(2) was rowdy or upset during the incident, PO Arredondo stated that he was not until the officers found the phone in his pocket, and he began to speak to the officers.

§ 87(2)(b) and § 87(2)(b) then got out of the car. PO Arredondo explained to them that he had pulled them over because he had heard the shots fired, and then his car had made a wide turn around the corner and the backseat passenger had looked back at the same time.

PO Efrain Collado

PO Collado's memobook for January 1, 2002 (enc. 15A-C) states that the officers observed a car at 12:30AM and that the rear passenger was nervous, evasive and not compliant with orders. He had his hands in his pockets and a "bulge." A cell phone was recovered and he was released. On the back of his memobook he wrote that as a "courtesy," § 87(2)(b) stated that he worked at § 87(2)(b) and that his mother and father are § 87(2)(b). While being searched he laughed and said, "You found it" meaning a black cell phone in his pants pocket.

PO Collado was interviewed on February 14, 2002 at the CCRB. A summary of this interview can be found in Enclosure 16A-C. § 87(2)(g)

He also stated that the officers did not have their guns drawn as they approached the car. PO Collado stated that as he approached the rear, driver's side window, he saw that § 87(2)(b) had an object in his hand, and that he shoved it down his pants. PO Collado stated that he was able to see all of this because he had his flashlight out, and they were underneath a streetlight.

The other officers were talking to the civilians in the front of the car, and PO Collado began to question § 87(2). First he asked him to remove his hands from his pants. § 87(2) did not respond, so the officer asked him again. § 87(2) then removed his hand from his pants, but the officer could still see a bulge in his pants between his waist and his groin area. The officer asked § 87(2) if he had any ID with him, and § 87(2) responded that he did not. The officer then asked him if he had a cell phone, in order to check if the object in his pants was a phone. § 87(2) told him that he did not have a phone. The officer asked him these questions several times because § 87(2) was being evasive towards him. The officer also thought that § 87(2) was slumped back in the seat in order to attempt to hide the bulge. PO Collado stated that § 87(2)(b) was not angry or loud, but appeared to be avoiding the officer's questions.

PO Collado was becoming nervous, so he asked § 87(2) to step out of the vehicle. § 87(2) refused. The officer asked him again to stop out of the vehicle, and then the officer opened the door. PO Collado stated that he was anxious to get § 87(2) out of the car because he thought that if he stood up, whatever was hiding in his pants would fall to the ground. He asked him again to please get out of the car. § 87(2) put his feet outside the car but did not get up. The officer asked him to get up a final time, and then reached for his arm and "lead" him out of the car, without using force. The item did not fall to the ground when § 87(2) stood up.

§ 87(2) against the side of the car, facing PO Collado. The officer reached for the object that was causing the bulge, and § 87(2) pushed his hand away. The officer and § 87(2) then engaged in a "passive" struggle. PO Collado pulled him to the rear of the car and was holding him with one hand, while trying to touch the bulge with the other to see what the item was. However, § 87(2) was still blocking the officer's hand. The sergeant observed what was going on, and came over to the rear of the car. He grabbed § 87(2)'s other hand, but the officers were still unable to reach the item in § 87(2)'s pants because § 87(2) was facing the car and was pushing his body against the car. PO Collado repeated the struggle was "not violent" but was "passive." He explained that § 87(2) was not being violent, but was attempting to struggle out of the officers' grip. He stated that § 87(2) was not saying anything during this time.

Sgt. Festino took out his mace because § 87(2) was not allowing the officers to touch the bulge. PO Collado asked the sergeant not to mace him, because they were all so close together that it would have hit PO Collado also. At that point, PO Collado leaned § 87(2) against the car and was able to handcuff one hand, and then the other. PO Collado estimated that the two struggle with § 87(2) for over one minute before they were able to handcuff him, but that he was only against the car while he was being handcuffed. He then reached down into § 87(2)'s pants and took out his cell phone. When he found the phone, § 87(2) gave the officers a sarcastic smile and laughed. The officers removed his handcuffs. PO Collado stated that neither officer searched any of § 87(2)'s pockets, or any of the rest of his clothing at any time during the incident.

PO Collado then sat § 87(2)(b) on the hood of the police car, and took his information. By this time, § 87(2) was very calm and was listening carefully to the officer. He talked to § 87(2) for approximately ten minutes about why they had been pulled over, and then § 87(2) asked him for his name and shield number. He told him the information, and then went back to the car and wrote his information down, as well as that of PO Arredondo and Sgt. Festino.

§ 87(2)'s brother, § 87(2)(b) told PO Collado that their parents were § 87(2)(b), and that § 87(2) worked at § 87(2)(b). Sgt. Festino wanted PO Collado to arrest § 87(2)(b) but he decided not to because of his age and position. He told the sergeant that he just wanted to make sure that § 87(2) understood the situation.

Police Documents

PO Collado filled out a Stop, Question and Frisk Report (enc. 17A) following this incident. On this report, he wrote that the incident lasted for ten minutes. The officer checked that the person was frisked but not searched, and describes that the person's demeanor was "angry." It also says that the person stated that he was not getting out of the car.

On the other side of the report, the officer checked that the stop was based on the officer's observations and on the fact that it was in an area where shots were being fired. In the description of suspect's actions, the officers checked "Proximity to scene of reported offense," "Unusual nervousness," "Evasive, False or Inconsistent Responses to Officer's Questions," "Furtive Movements," "Refusal to Comply with Officer's Directions," "Suspicious Bulge," and "Other," where the officer wrote in "no complying." It also states that he was searched based on a "Hard Object," and the "Outline of Weapon." There is no mention of the car having made a wide turn.

§ 87(2)(g)

Prior Bad Acts

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] Further, none of the three officers have any substantiated cases in their CCRB history.

Conclusions and Recommendations

§ 87(2)(g)

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§ 87(2)(g)

A) Abuse of Authority: Sergeant Raymond Festino pulled over a car in which § 87(2)(b) was an occupant.

According to Barry Kamins' *NY Search and Seizure Law*, an officer cannot stop a vehicle "merely because he has a gut feeling that the driver...is secreting contraband" (Kamins, 331). Instead, a stop must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion" (331). A stop can therefore be justified by either a violation of Vehicle and Traffic law, or suspicion of criminal activity. § 87(2)(g)

Kamins continues that in order to justify a stop to investigate criminal activity, an officer must have reasonable suspicion that the occupants have engaged in, are engaging in, or are about to engage in criminal activity. In this case, reasonable suspicion is defined as a “quantum of knowledge sufficient to induce an ordinary or prudent and cautious man under the circumstances to believe that criminal activity is at hand” (Kamins, 337, from *People vs. Cantor*, 1975). In other words, a “hunch” that something is wrong with the driver or occupant is not sufficient justification (341), and nor is the fact that an occupant is “turning his head...or looking back and forth” (343).

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B) Abuse of Authority: Police Officer Albert Arredondo drew his gun.

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C) Abuse of Authority: Police Officer Efrain Collado drew his gun.

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D) Abuse of Authority: Sgt. Raymond Festino drew his gun.

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E) Force: PO Efrain Collado pulled § 87(2)(b) out of the vehicle.

An officer may open the passenger door after making an investigative stop, and may also order a passenger out of the vehicle (Kamins, 376). Further, “If an officer observed a bulge in the passenger’s clothing which justifies a reasonable suspicion that the passenger is armed, he would be permitted to order the passenger out [of the vehicle] in order to conduct a frisk” (Kamins, 379). § 87(2)(g)

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F) Discourtesy: Sgt. Raymond Festino spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that Sgt. Festino was yelling at him throughout this incident, and that he called him an “asshole.” § 87(2)(b) and § 87(2)(b) also stated that the sergeant spoke rudely, and that he referred to § 87(2)(b) as an “asshole.” Sgt. Festino justified his entire treatment of § 87(2)(b) by saying that § 87(2)(b)

§ 87(2) was acting rowdy and irate throughout the incident, and was cursing at the officers. § 87(2)(g) In fact, they all stated that from the time that § 87(2)(b) was removed from the vehicle, until his handcuffs were removed, he was quiet. § 87(2)(g)

G) Abuse of Authority: Sgt. Raymond Festino authorized the frisk and search of § 87(2)(b)

According to Section 140.50(3) of Criminal Procedure Law, “When...a police officer...reasonably suspects that he is in danger of physical injury, he may search such a person for a deadly weapon or instrument.” Kamins notes that “search” here has been determined to mean “frisk” (Kamins, 145). § 87(2)(g)

PO Collado and Sgt. Festino allege that § 87(2)(b) was struggling away from them so much, that they were unable to touch the outside of his groin area in order to conduct a frisk. However, § 87(2)(b) stated that he was not resisting at all as the officers searched his pockets and inside of his pants. He stated in detail how the officers went into the back and front of his pants, touching his genitals and his buttocks. Further, § 87(2)(b) stated that she saw § 87(2)(b) pressed up against the car as the officers searched him, and that he was not moving around of his own accord, but only because the officers were moving him.

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Kamins states that when conducting a search, an officer cannot place his hand inside a suspect's waistband (Kamins 146), and for such a search to take place, the officer must have probable cause.

However, Kamins continues that if an officer observes a defendant place something that he or she believes to be a weapon, into a particular location on his body, the officer may make an immediate search of that location (Kamins, 146). § 87(2)(g)

H) Force: Sgt. Raymond Festino threatened § 87(2)(b) with pepper spray.

Sgt. Festino admitted that he threatened § 87(2)(b) with pepper spray after he was in handcuffs. § 87(2)(g)

Sgt. Festino stated that he was going to pepper spray him in order to calm him down, because he would not allow Sgt. Festino or PO Collado to frisk him, and because they had reason to believe that he was in possession of a gun. § 87(2)(g)

Patrol Guide 212-95 states that pepper spray “may be used when a member reasonably believes is necessary to effect an arrest of a resisting subject,” but it may “not be used in situations that do not require the use of physical force.” However, in the case of PD v. Schooninaker (December 2000), an officer was found guilty of misconduct when he maced a man who was handcuffed and seated inside the prisoner van, solely because this individual was screaming and kicking.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(b) stated that he after he was pulled out of the car, he was silent and did not resist the officers. § 87(2)(b) and § 87(2)(b) s testimonies correspond with this statement; indeed, § 87(2)(b) stated that she could see § 87(2)(b) s face pushed against the back window and that he looked sad and resigned, as if he had given up. And even PO Arredondo, while he was not watching the situation closely, stated that he did not hear § 87(2)(b) verbally resisting. Further, PO Collado confirmed that § 87(2)(b) was not saying anything at this time. The sergeant, on the other hand, alleged that § 87(2)(b) was cursing at the officers, and was flailing himself around in order to resist them.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
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